

N.A.S.D. AWARD

NATIONAL ASSOCIATION OF SECURITIES DEALERS

In the Matter of the Arbitration Between

Name of Claimants

Martin and Mae Lenow

93-01433

Name of Respondents

Merrill Lynch, Pierce Fenner & Smith, Inc.
Lena H. Jansen

REPRESENTATION

For Claimants at the hearing: Howard Stein, Esq. of Holleb & Coff, Chicago, Illinois.

For Respondents at the hearing: Nicholas R. Piccininni, Esq. of Merrill Lynch Pierce Fenner & Smith, Inc., New York, New York.

CASE INFORMATION

Statement of Claim filed: April 8, 1993. Claimant's Submission Agreement signed on: March 30, 1993.

Joint Statement of Answer filed by Respondents on: June 8, 1993. Respondent, Merrill Lynch Pierce Fenner & Smith, Inc.'s Submission Agreement signed on: June 9, 1993. Respondent, Lena Jansen's Submission Agreement signed on: May 17, 1993.

HEARING INFORMATION

Hearing Dates/Sessions: December 14, 1993 for two (2) sessions;
January 12, 1994 for two (2) sessions.

Hearing Location: Chicago, Illinois.

CASE SUMMARY

Claimants, Martin and Mae Lenow ("Claimants") alleged that Respondent, Merrill Lynch Pierce Fenner & Smith, Inc. ("Merrill Lynch"), through its representative, Respondent Lena Jansen ("Jansen") recommended that the claimants engage in short selling of securities for their account which was inappropriate and unsuitable for the size and the nature of the Claimant's account

and for their investment objectives which were income and growth with preservation of capital.

Claimants alleged that Merrill Lynch and Jansen violated suitability requirements, breached fiduciary duties, and failed to supervise.

Respondents, Merrill Lynch and Jansen generally denied the allegations set forth in the Statement of Claim. Merrill Lynch and Jansen alleged that Claimants expressed an interest in trading speculative stocks to achieve their investment objectives of long term price appreciation and income. Merrill Lynch and Jansen also alleged that claimants were knowledgeable, informed and willing investors who fully understood the risks. Merrill Lynch and Jansen further alleged that Martin Lenow endorsed and authorized a short selling strategy as a way to make money during the market's down cycles.

RELIEF REQUESTED

Claimants, Martin and Mae Lenow requested actual losses in the amount of \$93,500.00, interest, and punitive damages.

Respondents Merrill Lynch and Lena Jansen requested that the Statement of Claim be dismissed and that costs be assessed against the Claimants.

OTHER ISSUES CONSIDERED & DECIDED

The parties have agreed that the Award in this matter may be executed in counterpart copies or that a handwritten, signed Award may be entered. In either case, the parties have agreed to receive conformed copies of the Award while the originals remain on file with the NASD.

AWARD

After considering the pleadings, the testimony and the evidence presented at the hearing, the undersigned arbitrators have decided in full and final resolution of the issues submitted for determination as follows:

1. Respondents Merrill Lynch Pierce Fenner & Smith, Inc. and Lena Jansen shall be and hereby are jointly and severally liable for and shall pay to the claimants, Martin and Mae Lenow, damages in the amount of Fifteen Thousand Dollars and No Cents (\$15,000.00);
2. Each of the parties shall bear their own costs and expenses, including attorney's fees, other than those specifically enumerated for under Forum Fees below.

FORUM FEES

Pursuant to Section 43c of the Code of Arbitration Procedure, the following Forum Fees are assessed.

4 sessions X \$500 = \$2000 minus hearing session deposit of \$500 = net \$1500 due.

The NASD shall retain the claimants nonrefundable filing fee in the amount of \$150 and shall retain the \$500 hearing session deposit which was previously deposited by the claimants with the NASD. Claimants shall pay to the NASD additional hearing session fees in the amount of \$500.

Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Lena Jansen, jointly and severally, shall pay to the NASD additional hearing session fees in the amount of \$1000. Respondents, Merrill Lynch Pierce Fenner & Smith, Inc. and Lena Jansen, jointly and severally, shall also reimburse to the claimants, half of the nonrefundable filing fee in the amount of \$75.

The additional Forum Fees assessed by the panel are payable to the National Association of Securities Dealers, Inc.

By The Arbitration Panel:

Dated:

2-4-94 s/s Gordon B. Shneider, Esq.
Gordon B. Shneider, Esq.
Presiding, Public Arbitrator

2-3-94 s/s David G. Duggan, Esq.
David G. Duggan, Esq.
Public Arbitrator

2-3-94 s/s Frederic M. Rizzo
Frederic M. Rizzo
Industry Arbitrator

Date Award Served By The NASD: 2-14-94